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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,651	03/16/2004	John J. Vrana	60,152-1051	3934
27305	7590	06/17/2005	EXAMINER	
HOWARD & HOWARD ATTORNEYS, P.C. THE PINEHURST OFFICE CENTER, SUITE #101 39400 WOODWARD AVENUE BLOOMFIELD HILLS, MI 48304-5151				BRYANT, DAVID P
ART UNIT		PAPER NUMBER		
3726				

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/802,651	VRANA, JOHN J.
	<b>Examiner</b>	<b>Art Unit</b>
	David P. Bryant	3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 May 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-31 is/are pending in the application.
  - 4a) Of the above claim(s) 3-5,13 and 20-22 is/are withdrawn from consideration.
- 5) Claim(s) 23-31 is/are allowed.
- 6) Claim(s) 1,2,6,7,10-12 and 14-19 is/are rejected.
- 7) Claim(s) 8 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>040704</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Species A, Figures 1-6 (readable on claims 1, 2, 6-12, 14-19, and 23-26), in the reply filed on May 17, 2005, is acknowledged. The traversal is on the ground(s) that the generic claims define over the prior art. This is not found persuasive because, as noted in the rejection below, at least generic claims 1 and 14 are not allowable over the art of record.

The requirement is still deemed proper and is therefore made FINAL.

**Claims 3-5, 13, and 20-22 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.** However, since generic claim 23 has been found to be allowable, non-elected claims 27-31 have been rejoined with that group of claims, and examined therewith.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 2, 6, 10, 12, 14, 15, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Shinjo (U.S. Patent No. 4,507,859).**

Claim 1: Shinjo teaches a fastener installation apparatus 4, comprising:

a fixed member 2;  
a plunger assembly 1 having two spaced generally parallel projecting end portions adapted to be fixed (via screws 5) relative to said fixed member (Figures 1 and 2);  
a moveable member 6/12 resiliently biased away from said fixed member having two spaced parallel feed passages 8 each simultaneously receiving a fastener N to be installed by said fastener installation apparatus and each communicating with a generally transverse plunger passage 7 aligned with one of said projecting end portions of said plunger assembly, whereby two fasteners are simultaneously installed by said fastener installation apparatus upon movement of said moveable member toward said fixed member, thereby receiving said projecting end portions of said plunger assembly through said plunger passages (see column 2, line 62, to column 3, line 14).

Claim 2: As best shown in Figure 2, the plunger assembly 1 is integral and generally C-shaped having a body portion fixed relative to the fixed member 2 and integral generally parallel projecting leg portions.

Claim 6: As shown in Figure 1, sensors 11 are positioned adjacent the plunger passages to detect the presence of a fastener N therein (see column 3, lines 15-20).

Claim 10: As shown in Figure 1, the right side of element 6 is readable on the claimed "plate."

Claim 12: As shown in Figures 1 and 2, the plunger assembly 1 is releasably attached to the fixed member 2 using screws 5.

Claim 14: Shinjo teaches a fastener installation apparatus 4, comprising:

a fixed member 2;

a plunger assembly **1** fixed (via screws **5**) relative to said fixed member having a plurality of spaced generally parallel projecting legs, each leg having a free end (Figures 1 and 2);

a moveable member **6/12** spring biased (note spring **16**) away from said fixed member having a plurality of simultaneously spaced generally parallel feed passages **8**, each feed passage receiving a fastener for installation by said fastener installation apparatus and each feed passage communicating with a plunger passage **7** aligned with one of said projecting legs of said plunger assembly, whereby movement of said moveable member toward said fixed member drives said plurality of spaced projecting legs of said plunger assembly through said plunger passages, simultaneously installing a plurality of fasteners located in said plunger passages in a panel **P** located opposite said plunger passages (see column 2, line 62, to column 3, line 14).

Claim 15: As shown in Figure 1, sensors **11** are positioned adjacent the plunger passages to detect the presence of a fastener **N** therein (see column 3, lines 15-20).

Claim 19: As best shown in Figure 2, the plunger assembly **1** is integral and generally C-shaped having a body portion fixed relative to the fixed member **2** and integral generally parallel projecting leg portions.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 7, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinjo (U.S. Patent No. 4,507,859) in view of Scott (U.S. Patent No. 5,072,518).**

Shinjo teaches all claimed structure, with the exception of proximity probes having end portions adjacent to, but spaced from the plunger passages, whereby the fasteners do not contact the proximity probes. Instead, the proximity probes 11 of Shinjo appear to be positioned along a peripheral portion of the plunger passages such that the fasteners contact the probes upon being fed therein.

Scott teaches a fastener installation head 20 (Figure 1) having a proximity sensor 124 disposed adjacent to the plunger passage. A retainer 126 maintains the sensor away from contact with fasteners 116 as they are delivered from the feed passage 120 into the plunger passage. See column 6 (lines 62-68).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have disposed the sensors of Shinjo within corresponding retainers, as taught by Scott, to prevent direct contact between the fasteners and the sensors, thereby prolonging the useful life of the sensors.

**Claims 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinjo (U.S. Patent No. 4,507,859).**

Shinjo teaches all claimed structure, with the exception of a movable member comprised of two opposed mating members defining the feed passages therebetween. The provision of a two-piece movable member, rather than the unitary movable member 6 of Shinjo, is deemed to have been an obvious matter of design choice, since it has been held that that constructing a

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formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

***Allowable Subject Matter***

**Claims 23-31 are allowed.**

**Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.**

The following is a statement of reasons for the indication of allowable subject matter:

The prior art fails to teach or fairly suggest a fastener installation apparatus having an elongated proximity probe with a longitudinal axis extending generally perpendicular to both the plunger passage and the feed passage.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David P. Bryant whose telephone number is (571) 272-4526. The examiner can normally be reached on Monday-Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David P. Bryant  
Primary Examiner  
Art Unit 3726

dpb  
5/26/05